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ART. I.—1. *Exchange of Notes between the United Kingdom and the United States of America providing for a Provisional Boundary between the Dominion of Canada and the Territory of Alaska near the Head of Lynn Canal, October 20, 1899.* Treaty Series, No. 19, 1899. Presented to Parliament November 1899.

2. *The Alaskan Boundary.* By the Hon. JOHN W. FOSTER, Ex-Secretary of State of the United States. 'The National Geographic Magazine' for November 1899. Washington.

3. *Alaska and the Klondike.* By ANGELO HEILPRIN, F.R.G.S., F.G.S.A., Professor of Geology at the Academy of Sciences at Philadelphia. London: 1899.

THE questions at issue between Great Britain and the United States in respect of the Alaska boundary are not new, though for many years the remoteness of the region, and the general ignorance which prevailed in regard to the character and resources of the disputed territory, prevented the subject from attracting attention outside a narrow circle. Nor even now can there be said to be much knowledge of it gone abroad, especially in the United States, whose press, for the most part, betrays a lack of acquaintance with the facts material to the controversy, quite incompatible with its intelligent discussion. It may be useful, therefore, if we, in regard to a somewhat intricate matter, give, in a necessarily condensed form, an account of what is commonly known as the Alaska boundary question.

The territory in dispute is a strip of land, so far as at present known of small inherent value, bordering the north-west coast of America, between latitude 55° and 60°. No con-

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siderable deposits of gold or other minerals have been found therein. The extremely rugged formation of the country renders intercommunication difficult. Its rivers are navigable only by steamers of light draught, while the climate is such that neither cereals nor fruits can be successfully cultivated. Indeed, with the exception of a week or so in the months of May and September, the sun rarely pierces the mantle of fog and mist which envelopes this inhospitable coast.

This strip is deeply indented by inlets, one of which, called the Lynn Canal, forms the natural gateway to the newly discovered Canadian gold-fields of the Yukon. In this circumstance lies the immediate importance of the Alaska boundary controversy. Lynn Canal, or channel, penetrates the mountains bordering the western coast and runs eighty miles into the interior. At about sixty miles from the ocean it bifurcates, forming two inlets, the Chilkat and the Chilkoot, each receiving rivers at its head. The valleys of these rivers lead to the passes affording access to the British hinterland beyond. While the boundary line is contested at almost every point throughout its entire length, the interest of the question for the moment centres in the heads of the Lynn Canal.

The United States claim that the international boundary runs round the heads of all inlets, including the Lynn Canal, and that, consequently, the three ports of Dyea, Skagway, and Pyramid Harbour, at the mouth of the Taiya, Skagway, and Chilkat rivers respectively, are within American territory. The Canadians contend that the dividing line crosses the Lynn Canal within thirty miles from its mouth, leaving the whole upper part well within British jurisdiction. So long as the hinterland was believed to be valueless no one cared much how it was reached, but with the announcement of gold discoveries in the Klondike region the means of access thereto became at once an object of actual and pressing concern.

In the year 1867 the United States purchased Alaska from Russia for 1,440,000*l*. As manifestly Russia could only convey to the United States that of which she stood possessed at the date of sale, it becomes important to ascertain on what her title to Alaska was founded. This the treaty of cession itself discloses, for Article 1 declares that 'the eastern limit (of the territory of Alaska) is the 'line of demarcation between the Russian and the British 'possessions in North America as established by the convention between Russia and Great Britain of February 18*th*,

'1825.' Before quoting the language of the treaty, it may be well briefly to recall the circumstances which led to its negotiation.

Scarce two hundred years have elapsed since the advance guard of the Cossack horde commissioned by Peter the Great to explore and conquer the north-eastern portion of Asia reached Kamschatka and penetrated to the shores of the Pacific Ocean. Within fifteen years thereafter the whole of this immense region was incorporated in the Russian Empire. These vast acquisitions served but to incite the ambitious Czar to further conquest. Vessels were built at Kamschatka by his command, and expeditions led forth by Behring, Tchiricoff, and other explorers, planted the Russian flag at various places along the north-west coast of America. The Russian traders, who followed in their wake, speedily established trading posts on the Aleutian Islands, and gradually crept down the coast.

At this period the most uncertain notions prevailed as to the nature of the connexion between America and Asia. To Captain Cook belongs the honour of having made known the true conformation of that distant shore and the relative proximity of the two continents. His journals, first published in 1784-5, captivated public attention by their accounts of the numbers of fur-bearing animals in the waters and along the coasts of the North Pacific Ocean, and the high prices paid for their skins in China. The excitement became contagious, and soon a host of rival traders—English, French, Portuguese, East Indian, and American—flocked to those northern seas.

In 1799 an association of Siberian merchants was granted a charter by the Emperor Paul, under the title of the 'Russian American Company.' To this association was given for twenty years the exclusive enjoyment of the north-west coast as far south as the 55th degree of north latitude, in virtue of alleged discovery by Russian navigators. These privileges were subsequently confirmed and extended by the Emperor Alexander, under whose protection the power and influence of the Russian American Company, to which had been entrusted the control and management of the country, rapidly increased.

This assumption of sovereignty on the part of Russia over that portion of the coast lying between the 55th and 60th degrees conflicted with prior claims of Great Britain and Spain to the same region. The Russians, however, continued to encroach, and, not content with

claiming jurisdiction on land, sought to extend their dominion over the sea as well.

On September 14<sup>th</sup>, 1821, the Emperor Alexander issued an imperial ukase, in which the whole west coast of America north of the 51st parallel was declared to belong exclusively to Russia, foreign ships being prohibited from approaching within 100 Italian miles of the shore under penalty of confiscation.

Great Britain and the United States at once protested against this assumption of exclusive sovereignty over the territories described in the ukase, as well as against the claim to a monopoly of navigation and trade within the maritime limits therein set forth. Out of this protest grew the treaty of 1825, by which Russia abandoned her extravagant pretensions as regards the high seas, and withdrew on land within the limits prescribed in Articles III. and IV. of the treaty, which read as follows:--

‘III. La ligne de démarcation entre les possessions des Hautes Parties Contractantes sur la côte du continent et les îles de l’Amérique nord-ouest sera tracée ainsi qu’il suit :

‘A partir du point le plus méridional de l’île dite Prince of Wales, lequel point se trouve sous la parallèle du 54° degré 40 minutes de latitude nord, et entre le 131° et le 133° degré de longitude ouest (méridien de Greenwich), ladite ligne remontera au nord le long de la passe dite Portland Channel, jusqu’au point de la terre ferme où elle atteint le 56° degré de latitude nord : de ce dernier point la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu’au point d’intersection du 141° degré de longitude ouest (même méridien) ; et finalement, dudit point d’intersection, la même ligne méridienne du 141° degré formera, dans son prolongement jusqu’à la Mer Glaciale, la limite entre les possessions Russes et Britanniques sur le continent de l’Amérique nord-ouest.

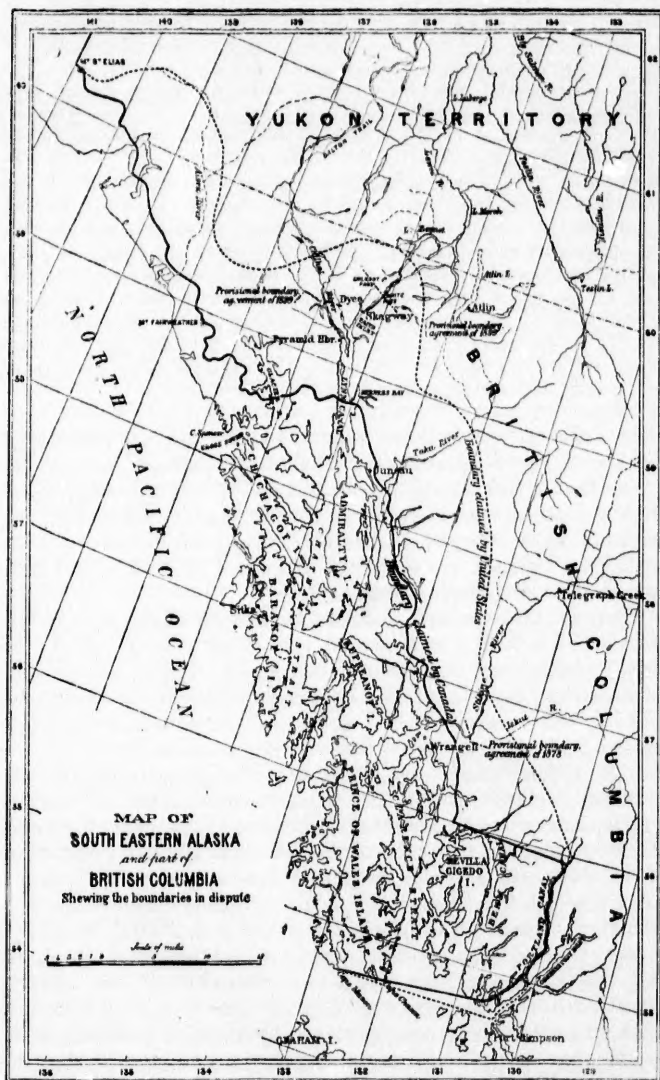
‘IV. Il est entendu, par rapport à la ligne de démarcation déterminée dans l’Article précédent :

‘1. Que l’île dite Prince of Wales appartiendra tout entière à la Russie :

‘2. Que partout où la crête des montagnes qui s’étendent dans une direction parallèle à la côte depuis le 56° degré de latitude nord au point d’intersection du 141° degré de longitude ouest, se trouveroit à la distance de plus de 10 lieues marines de l’océan, la limite entre les possessions Britanniques et la lisière de côte mentionnée ci-dessus comme devant appartenir à la Russie, sera formée par une ligne parallèle aux sinuosités de la côte, et qui ne pourra jamais en être éloignée que de 10 lieues marines.’

The questions at issue between Great Britain and the United States turn upon the interpretation of the language of this treaty of 1825

For many years after its discovery the chief interest in the north-west coast of America lay in its maritime wealth,





comparatively little importance being attached by England or Russia to the delimitation of their respective jurisdictions on land. The whole negotiations which led to the treaty of 1825 grew out of an attempt on the part of Russia to circumscribe the sea:—

‘So entirely and absolutely true is this proposition,’ writes Mr. Canning, who as Foreign Minister had charge of the negotiations, ‘that the settlement of the limits of the respective possessions of Great Britain and Russia on the north-west coast of America was proposed by us only as a mode of facilitating the adjustment of the difference arising from the ukase by enabling the Court of Russia, under cover of the more comprehensive arrangement, to withdraw, with less appearance of concession, the offensive pretensions of that edict.

‘It is comparatively indifferent to us whether we hasten or postpone all questions respecting the limits of territorial possession on the continent of America, but the pretensions of the Russian ukase of 1821 to exclusive dominion over the Pacific could not continue longer unrepealed without compelling us to take some measure of public and effectual remonstrance against it.’

This indifference to the ascertainment and settlement of the boundaries between the British and Russian possessions accounts for the fact that no survey of the north-west coast of America was undertaken for nearly a century after its original exploration by Vancouver, during the whole of which period that discoverer’s charts remained the standard and indeed the only original authority.

Such was the state of affairs regarding Alaska when, in March 1867, it was announced that Russia had ceded her North American possessions to the United States. The negotiations were conducted with the utmost secrecy, and nothing was known of the transaction in America until the issue of the President’s proclamation summoning an extra session of the Senate to consider it. The motives for the sale were subsequently declared to be the small value and unproductive nature of the territory, the cost of its protection and maintenance, and the desire of Russia to be rid of a possession which at some future time might involve her in difficulties with the United States. To these reasons her Majesty’s Minister of the day at Washington opined should be added a secret hope of possible complications between England and the United States which the extension of the latter’s jurisdiction to the north of British America might entail. This was afterwards openly stated by Charles Sumner, who, in his speech in Congress on the cession, suggested that in parting with Alaska Russia was moved by considerations

similar to those which had influenced Napoleon in the sale of Louisiana—that he was glad thereby ‘to establish for ever the power of the United States, and give to England a maritime rival destined to humble her pride.’

With the transfer of sovereignty to the United States passed also the policy of neglect and indifference which had characterised Russia's possession of Alaska. When in 1872, shortly after the discovery of gold in the Cassiar district of British Columbia, her Majesty's Government, at the instance of the Canadian Ministry, suggested to the United States the expediency of delimiting the boundary between Alaska and British Columbia, Mr. Fish, then Secretary of State, replied that, while he was satisfied as to the expediency of the proceeding, he feared that Congress might not be willing to vote the necessary appropriation. His surmise proved well founded, for in the following year a bill to provide for the cost of a joint survey, which had been recommended by the President in his annual Message, failed to pass. The amount asked for was about 300,000*l*. Owing to the disinclination on the part of Congress to provide the means necessary for the delimitation of the whole boundary, or indeed of any part of it, the question remained in abeyance for some years. In 1885 it was revived by President Cleveland, who, in his Message to Congress, suggested for the first time the idea, subsequently developed by Messrs. Bayard and Phelps, that the descriptive portions of the treaty of 1825 were founded upon erroneous conceptions of the natural features of the country, and that consequently the line contemplated by the negotiators was impracticable of location. The recommendation by the President of a preliminary survey, with a view to the adoption of ‘a more convenient line,’ was frustrated by Congress, which again declined to make the necessary appropriations, and it was not until 1892 that an agreement was reached between Great Britain and the United States for the appointment of a Survey Commission, having for its object the ascertainment of facts and data necessary to the permanent delimitation of the boundary line in accordance with the spirit and intent of existing treaties. This agreement was embodied in a convention, under which each Government appointed commissioners, who on the last day of the year 1895 submitted their joint report, together with elaborate maps and photographic views indicating the topographical features of the country, but unaccompanied by any recommendation as regards the boundary.

The limit to the Russian possessions on the continent of America established by the treaty of 1825 is in part a natural boundary and in part a meridian line. From the head of Portland Canal it follows the summit of the mountains situated parallel to the coast (subject to an alternative proviso to be considered hereafter) as far as the intersection of the same by the 141st degree of west longitude, and thence along that meridian to the Polar Sea. The negotiations we have been considering related to the south-eastern or natural boundary of the coast strip.

Meanwhile the miners of Cassiar were pushing their way northward through the mountain passes and down the valley of the Yukon river, in certain small tributaries of which, as far back as 1886, deposits of gold had been found. Several of these streams, notably 'Forty Mile Creek,' were known to be crossed by the 141st meridian, though no one could say exactly where the line ran. As its ascertainment was a matter of urgency, the Canadian Government in the summer of 1887 sent out surveyors who astronomically determined the points of intersection both with respect to the Yukon and to Forty Mile Creek. Two years later the United States Coast and Geodetic Survey despatched a party on a similar mission. The result of their observations at the Yukon differed about 600 feet from that of the Canadian survey, but at Forty Mile Creek the two very nearly coincided. Nothing further was done for some years, when on the eve of the Klondike discoveries the United States Government proposed, with respect to this survey, that where discrepancies occurred between the results of American and Canadian experts as to the correct geographical co-ordinates of one and the same point, a position midway between the two locations should be adopted. Canada accepted this offer to 'split the difference.' She also agreed to a characteristic proposal of the United States Government made at the same time. Near the intersection by the 141st meridian of the mountains parallel to the coast, Mount St. Elias rears its lofty crest full 18,000 feet above the level of the sea. As the highest mountain on the American continent, it should as a matter of course, in the estimation of the good people of the United States, have been situated within their borders. Unluckily for them, it stands more than two miles east of the 141st meridian, and is thus indisputably within British territory. Canada was invited to repair this oversight on the part of nature by consenting to a deflection of the southern portion of the line so as to make it range with the



summit of Mount St. Elias, thus sharing possession of this great landmark. She smilingly acquiesced, and in so doing gave a further proof of her good-will.

Early in the year 1897 a convention embodying these concessions was signed at Washington by the representatives of the respective Powers. Unfortunately this treaty failed to obtain the necessary ratification by the United States Senate. It accordingly fell to the ground, and the line of the 141st meridian remains unsettled to this day, save so far as the common sense of the people in the localities through which it passes has accepted and recognised a conventional division between British and American territory.

In view of the difficulty experienced in reaching an agreement as to the determination of a meridian line, with respect to which one would think there could be no possible room for difference of opinion, it is not surprising that the south-eastern boundary, depending as it does upon the obscure language of the treaty of 1825, should furnish abundant material for controversy.

A reference to Articles III. and IV. of the treaty of 1825, quoted above, shows that the line, starting from the southernmost point of Prince of Wales Island, is to ascend to the north along the channel called Portland Channel until it reaches the 56th degree of north latitude, from which point it is to follow the summit of the mountains situated parallel to the coast as far as their intersection by the 141st meridian, provided these mountains are within ten marine leagues from the ocean. Should the mountains at any point prove to be more than that distance from the ocean, then the limit shall be a line parallel to the windings of the coast, from which it shall never be farther distant than 10 marine leagues.

Having ascertained the southernmost point of Prince of Wales Island, one is suddenly confronted by the fact that between it and Portland Channel sixty miles of open ocean intervene. Furthermore, Portland Channel lies almost due east from the southernmost point. How then is the line joining the two to ascend to the north? Again, the line is to ascend to the north along Portland Channel, until it strikes the 56th degree of north latitude. But Portland Channel does not attain to latitude 56, and there is no provision made for the course the line is to take between the head of the channel and the point where the mountains situated parallel to the coast are crossed by that parallel. Then follow the all-important questions, (1) which are the

mountains situated parallel to the coast? and (2) what is the coast?

Without pursuing the inquiry too minutely or entering into many of its details, it is proposed to set down here briefly the British and American interpretations of this treaty, in so far as their respective contentions can be ascertained from the published views and utterances of public men in Canada and the United States, for neither Government has as yet given out an official statement of its claim.

Fortunately for our purpose, however, the Honourable John W. Foster, *ex-Secretary of State of the United States*, and a member of the International Joint High Commission, has taken the somewhat unusual course in a plenipotentiary, during the progress of a negotiation in which he is engaged, of contributing to a magazine \* an article—and a very full and interesting article it is—on the subject of the Alaska boundary. In view of General Foster's recognised position as a high authority on the subject of which he treats, this paper must be deemed to be an authentic, if informal, presentation of the case of the United States Government.

While no British commissioner has been so considerate as General Foster in this respect, Canada's claim can nevertheless be stated here with all needful accuracy.

At the outset it may be observed that there exists a very general agreement to the effect that the negotiators of the treaty of 1825 relied largely upon Vancouver's charts and the narrative of his voyages for their information respecting the physical features of the country with which they found themselves called upon to deal. Both parties concur in holding Cape Muzon to be the southernmost point of Prince of Wales Island, though, as a matter of fact, it is not on Prince of Wales Island at all, and both acknowledge that the body of water to-day known as Portland Canal is, despite the erroneous description in the treaty, the channel along which the line is to ascend. Here, however, agreement ends. The United States holds that the line should enter Portland Channel by what since 1853 has been known as Portland Inlet, which is a part of the waters named by Vancouver 'Observatory Inlet.' The British contention is that the Portland Channel of the treaty is the channel so marked on Vancouver's charts and described in his narrative in terms that leave no doubt as to the body of water to

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\* *The National Geographic Magazine*, November, 1899.

which he intended them to apply. The deflection desired by the United States would give to that Power the principal islands lying at the entrance of Portland Canal, and thereby the command not merely of the inlet, but also of the harbour of Port Simpson in British Columbia, which, by reason of its natural advantages, is destined to become an important commercial and strategic point.

In support of this claim it is argued on the side of the United States that the line, departing from the southernmost point of Prince of Wales Island, should follow along the parallel of  $54^{\circ} 40'$ , which would bring it in at the mouth of Observatory Inlet. They base their contention on the fact that this latitude is expressly mentioned in the treaty in connexion with the point of commencement, and they urge that the reason of the omission to state that the boundary should proceed along that parallel is that the repetition was considered unnecessary.

The Canadians reply that when in the course of the negotiations of 1823-5 Russia was forced to abandon her extravagant pretensions put forward in the ukase of 1821, she took her stand upon the charter of the Emperor Paul, and claimed down to  $55^{\circ}$ . To that line she stubbornly adhered throughout. Inasmuch, however, as the parallel of  $55^{\circ}$  cuts Prince of Wales Island near its southern extremity, the Russian plenipotentiaries proposed that the portion of the island below that line should be included in the Russian possessions. In order to effect this result the starting point was fixed at the southernmost point of Prince of Wales Island, which happens to be in latitude of  $54^{\circ} 40'$ . Thus the extension to  $54^{\circ} 40'$  was merely a local exception to fit a particular case. For similar reasons of convenience the continental line was carried south a few minutes of latitude to Portland Canal, which affords the first natural boundary on the continent south of  $55^{\circ}$ .

There can be little doubt from the text of the treaty that the southernmost point of Prince of Wales Island and not the parallel of latitude was intended as the point of beginning. The geographical co-ordinates are given for the purposes of identification merely. If they were intended to govern, the wording would be different, for the definition of a point by geographical co-ordinates must be by the intersection of two lines, and not by a parallel of latitude and two meridians seventy-five miles apart. Seeing that the line is to 'ascend to the north,' a claim that it is first to run sixty miles due east along a parallel of latitude seems manifestly untenable.

Canada also contends that, having determined the point of departure (Cape Muzon) and also the place on the continent where the boundary strikes the coast (the mouth of Vancouver's Portland Channel), it is agreeable to the rules of legal construction to hold, in the absence of any specific directions, that the line joining these two points should take the shortest way, which is not a parallel of latitude, but along the arc of a great circle.

Following the same rule of interpretation Canada maintains that the head of Portland Canal and the point where the 56th degree crosses the mountains situated parallel to the coast within ten marine leagues from the ocean, should be joined by a straight line.

The treaty continues:

'De ce dernier point' (that is, the intersection of the mountains by the 56th parallel) '*la ligne de démarcation suivra la crête des montagnes situées parallèlement à la côte, jusqu'au point d'intersection du 141° degré de longitude ouest.*'

The difficulty here lies in the fact that this whole region is highly mountainous. There exists not one range, but many, rising one behind the other in irregular fashion, connected in many places by spurs, the whole forming more or less a confused jumble of mountains.

The United States, according to General Foster, takes the ground that the treaty of 1825 was framed in the light of imperfect geographic knowledge; that the mountain range depicted on Vancouver's maps as almost bordering the coast has no existence in fact; that there is no continuous range or chain at all, and that consequently it is necessary to fall back upon the alternative provision of Article IV., under which they claim that the boundary line should be everywhere ten marine leagues inland from the coast, the distance being measured from the head of tide water round all the inlets. It will be observed that the United States read this clause as if it meant that the boundary line is to be 'everywhere not less than' instead of 'nowhere more than' ten leagues from the sea.

The British claim is that by the crest of the mountains situated parallel to the coast is meant the tops of the mountains nearest the ocean. Great Britain denies the necessity for a continuous 'range' or 'chain,' and points out that neither word occurs in the treaty. The word 'parallel,' it holds, is not to be taken in its strict geometrical sense as implying equidistance. It is unnecessary to search for mountains which are all at precisely the same distance

from the coast, for Article IV. of the treaty contemplates the possibility of these mountains being sometimes more and sometimes less than ten marine leagues therefrom. It is a natural fact that mountains from 3,000 to 5,000 feet high lying within five or six miles of the sea border the coast throughout its entire length. When it is borne in mind that Vancouver had no knowledge of the interior country, his observations having been made from his ships, it does not seem unreasonable to suppose that the mountains depicted on his charts are those seen from the sea as fringing the coast line, to the serrated appearance of whose tops, heightened by their irregularity of outline, the word 'crest' is peculiarly applicable. Canada holds these to be the mountains of the treaty. She maintains that in delimiting this boundary the summit ridge of each of these mountains should be taken, and the valleys between crossed by straight lines from crest to crest, whether they contain streams, rivers, or such arms of the sea as do not form part of the ocean.

Thus, while Canada seeks to restrict her neighbour to a narrow strip of sea coast, having an average breadth of perhaps four or five miles, the United States claim an extensive tract of country running back in some places more than a hundred miles. In the presence of such widely conflicting claims recourse is naturally had to the negotiations which led up to the treaty of 1825. These negotiations were carried on at the outset between Sir Charles Bagot, British Ambassador at St. Petersburg, acting under instructions of George Canning, at that time Foreign Secretary, and Count Nesselrode, then Russian Minister of Foreign Affairs. Subsequently Sir Charles Bagot was replaced by Stratford Canning, by whom the treaty was concluded.

The correspondence between these statesmen contains a good deal to support the British contention that the boundary follows the summit of the mountains nearest the sea. Throughout the whole of their negotiations it is quite clear that Russia's paramount desire was to preserve for her establishments on the islands a monopoly of trade with the coast Indians, and with that object in view she strove to keep back the British by barring their access to the ocean. Nothing could so effectually serve this purpose as a range of mountains, and therefore we find Nesselrode at an early stage of the proceedings suggesting that the line

'remonteroit le long de ces montagnes parallèlement aux sinuosités de la côte, jusqu'à la longitude du 139° degré (méridien de Londres), degré dont la ligne de prolongation vers le nord formeroit la limite



ultérieure entre les possessions Russes et Angloises au nord, comme à l'est.'

And he frankly goes on to say:—

'Le motif principal qui force la Russie à insister sur la souveraineté de la lisière indiquée plus haut sur la terre ferme depuis le Portland Canal jusqu'au point d'intersection du 60° avec le 139° de longitude, c'est que, privée de ce territoire, la Compagnie Russe-Américaine n'auroit aucun moyen de soutenir les Etablissements qui seroient dès lors sans point d'appui, et qui ne pourroient avoir aucune solidité.'

With the width of the strip he does not appear to have been specially concerned; for, writing to Count Lieven, Russian Ambassador in London, he observes with reference to the above proposal:—

'Cette proposition ne nous assuroit qu'une étroite lisière\* sur la côte même, et elle laissoit aux Etablissements Anglois tout l'espace nécessaire pour se multiplier et s'étendre.'

And in their second written offer the Russians propose as the eastern boundary

'la chaîne de montagnes qui suit à une très petite distance\* les sinuosités de la côte.'

The Hudson's Bay Company, to whom this proposal was referred by Canning, expressed their general agreement thereto, but in respect of the question of the eastern boundary the Governor observed:—

'They beg me, however, to suggest the expediency of some more definite demarcation on the coast than the supposed chain of mountains contiguous to it, and they conceive there can be no difficulty in arranging this point from the expression in the proposition of the Russian negotiators: "la chaîne des montagnes qui sont à une très petite distance† des sinuosités de la côte."'

Adopting this suggestion, Canning instructed Bagot to take as the line of demarcation

'a line . . . through Portland Channel, till it strikes the mainland in latitude 56, thence following the sinuosités of the coast, along the base of the mountains nearest the sea\* to Mount Elias, and thence along the 139th degree of longitude to the Polar Sea.'

And in the draft *projet* enclosed he embodies the same idea in different words:—

'From this point it shall be carried along that coast, in a direction parallel to its windings, and at or within the seaward base of the

\* In the original these words are not italicised.

† These words are italicised in the original.

mountains by which it is bounded,\* as far as the 139th degree of longitude west of the said meridian.'

This *projet* having been communicated to Count Lieven, the Russian Ambassador took exception to the line following the base of the mountains instead of the summit, pointing out that, in view of the limited knowledge of the geographical features of the north-west coast available, it might turn out that the mountains forming the boundary reached by an imperceptible slope to the water's edge. So well did Count Lieven understand the British proposal that he was apprehensive lest the boundary line might actually coincide with the coast. To obviate that possibility he suggested that the crest of the mountains—the same mountains, be it observed—be taken instead of the base.

Canning ultimately agreed to this, but, commenting upon a new move of the Russians, qualified his assent by insisting that the mountains should be the boundary only where they did not extend more than ten leagues from the coast, otherwise, said he, foreseeing the inaccuracy of the maps before them, 'we might be assigning to Russia immense tracts of 'inland territory where we only intended to give, and they 'only intended to ask, a *strip of sea-coast*.'\*

This is his final instruction to Stratford Canning. At the conclusion of the negotiations Stratford Canning writes:—

'The line of demarcation along the strip of land on the north-west coast of America assigned to Russia is laid down in the Convention *agreeably to your directions*,\* notwithstanding some difficulties raised on this point, as well as on that which regards the order of the articles by the Russian plenipotentiaries.'

In acknowledging the receipt of this communication, Mr. Canning says:—

'Having laid them' (the despatches transmitting the Convention) 'before the King, I have received his Majesty's commands to express his Majesty's particular satisfaction at the conclusion of the treaty respecting the Pacific Ocean and north-west coast of America in a manner *so exactly conformable to your instructions*,\* and to direct you to express to the Russian Government the pleasure which his Majesty derives from the amicable and conciliatory spirit manifested by that Government in the completion of this transaction.'

While it is true that the limiting words 'by which it is 'bounded,' which appear in the earlier draft furnished by Canning to Bagot, are not found in the final *projet* sent to Stratford Canning, their equivalent, 'seaward base,' never-

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\* In the original these words are not italicised.

theless, was contained in the latter's instructions, to which the treaty, Canning himself testifies, 'so exactly' conformed.

All this, while militating against the American claim to an extensive *lisière*, leaves unresolved the cardinal inquiry, what did the negotiators mean by the coast? Did they intend that the strip of land to be given to Russia should include and pass round all the inlets from the ocean, or, when they employed the term 'côte,' did they mean thereby the broad outlines of the continental shore?

The Fourth Article speaks of the line of coast which is to belong to Russia, and provides that whenever the mountains which by the Third Article are made the boundary 'prove to be at a distance of more than ten marine leagues from the 'ocean,' an artificial line should be drawn as the boundary, parallel to the windings of the coast, but never exceeding the distance of ten marine leagues therefrom. The minimum distance at which such line should be drawn from the coast or ocean is not stated. That probably would be determined by the distance from the coast where the mountain range which formed the boundary ceased. But the maximum distance is clearly indicated, and by using the words 'coast' and 'ocean' indifferently to express the shore, or waters, from which the ten marine leagues were to be measured, it may fairly be argued that the negotiators of the treaty understood the word 'coast' to refer to the coast of the ocean as distinguished from the coast or shore of inlets running up into the interior, such as Taku Inlet or Lynn Canal.

The evolution of this word 'ocean' is worth examination.

In the early stages of the negotiations, Sir C. Bagot speaks of a line 'toujours à la distance de dix lieues du 'rivage.'\* A draft *projet* was subsequently furnished Bagot by Canning, Article II. of which reads:—

'De ce point elle suivra cette côte parallèlement à ses sinuosités, et sous ou dans la base vers la mer\* des montagnes qui la bordent, jusqu'au 139° degré de longitude ouest dudit méridien.'

Sir C. Bagot failed to reach an agreement, and quitted St. Petersburg.

He was succeeded by Stratford Canning, who bore with him a new draft convention, Article III. of which provides:—

'If the summit of the aforesaid mountains shall turn out to be in any part of their range at more than the distance of 10 marine leagues from the *Pacific*,\* then that for that space, &c.'

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\* In the original these words are not italicised.

Thus we find the original word 'rivage,' which is applicable to any body of water, exchanged for 'mer.' 'Mer,' which might be held to apply to salt water generally, becomes in turn 'Pacifick' in the *projet* of December, while, as if to make the matter quite sure, the 'Pacifick' of the draft is changed into the 'Ocean' of the treaty.

That the heads of inlets many miles inland could correctly be designated as the 'Pacifick' or the 'Ocean' was evidently foreign to the mind of Count Nesselrode when, writing to Lieven, he referred to the Portland Canal,

'dont l'embouchure dans l'Océan est à la hauteur de l'île du Prince de Galles et l'origine dans les terres entre le 55° et 56° de latitude.'

The entrance to the canal is on the coast—the head is within the continent. Again:—

'On ne peut effectivement assez le répéter, d'après le témoignage des cartes les plus récentes, l'Angleterre ne possède aucun Etablissement ni à la hauteur du Portland Canal ni au bord même de l'Océan.'

And this point is still more clearly brought out in the counter draft of the Russian plenipotentiaries, wherein, alluding to Portland Canal, they say:—

'où cette passe se termine dans l'intérieur de la terre ferme au 56° de latitude nord.'

These passages indicate that the Russians distinguished between the shores and heads of inlets and the ocean. The Canadian Government takes the same view. It holds that the shores of inlets were not included in the meaning to be conveyed by 'la côte.' It affirms that, however relevant the word 'Ocean' might be to those parts of bays which from their breadth and conformation are common international waters, it cannot with any accuracy be applied to inlets, which by international law and common consent are parts of the territory of the country owning the shores thereof, and consequently that the line, whether marked by mountains or by a survey line, should be drawn without reference to such inlets.

The United States, in support of the opposite contention, point to the fact that on the maps used in these negotiations the mountains are represented as passing round the heads of all the inlets, including the Lynn Canal, and that no objection was raised on that score by Mr. Canning or Sir C. Bagot, though the extent of the Lynn Canal must

have been known to both of them, for the latter suggested to the former 'a meridian line drawn from the 'head of the Lynn Canal, as it is laid down in Arrow-smith's last map, or about the 135th degree of west 'longitude,' as the boundary in the interior of the continent. They also argue that the *lisière* was to be a continuous strip of territory, whereas, if it were broken at intervals by inlets extending into British territory, its continuity would be destroyed and its usefulness as a barrier against British aggression greatly impaired. There does not seem to be much in this point however, for Article VI. of the treaty of 1825 secures to British subjects the right in perpetuity of 'navigating freely and without any hindrance whatever all 'the rivers and streams which in their course towards the 'Pacific Ocean may cross the line of demarcation upon the 'line of coast described in Article III. of the present 'Convention.' There is no apparent reason why a narrow fiord should be more destructive to continuity than a wide river. Thirty miles up the Stikine would have been just as accessible and convenient a trading base from which to reach the coast Indians as thirty miles up the Lynn Canal, provided the river were as navigable as the canal, which it happens not to be, though of this the negotiators had no knowledge, their impression rather being that there existed several large rivers leading inland which were not marked on the maps. Indeed, Great Britain's insistence in 1825 on complete freedom of intercourse with the interior by all rivers and streams strengthens Canada's claim to the heads of these narrow tidal inlets which are not clearly separable on the map from the lower portions of the rivers by which upper parts of the same valleys are occupied. Neither the limit of influence of the tides, nor the change from salt to fresh water, can be strictly defined in the upper parts of these inlets, which vary in size with circumstances, such as the height of the barometer, the direction and force of the winds, and the season of the year. The heads of inlets, therefore, do not afford good fixed points from which to measure the width of a coast strip.

It is, however, rather upon its alleged prescriptive rights than on arguments drawn from the letter of the treaty and the negotiations which preceded it, that the United States bases its claims to the heads of inlets. The fact that during the later years of Russian dominion the Hudson's Bay Company held the whole coast from Cross Sound to Portland Canal, under lease from the Russian American Company, is



cited as strong evidence of Great Britain's acknowledgement of Russia's jurisdiction over the disputed territory. But, apart from the question whether this lease included the heads of the Lynn Canal—a somewhat doubtful point—it is by no means admitted on the part of Canada that any action of the Hudson's Bay Company could be held to bind the British Government in a matter of territorial right, unless taken with its authority or with its subsequent sanction and approval. The function of the Hudson's Bay Company was not to define boundaries, but to collect furs. They already enjoyed a monopoly of trade in British territory. But to know just where British territory ended and Russian territory began was no easy matter, and the uncertainty caused by the absence of any line of demarcation between the possessions of the two Powers greatly prejudiced the Company's interests, involving them, as it did, in constant disputes with their Russian-American rivals. By leasing from Russia all the territory that was Russian (whatever that might ultimately turn out to include), they secured to themselves the entire trade of the mainland. That was all they sought. So long as they were free to range the country without molestation, erect their posts, and traffic with the natives, it mattered little to them whether they held any particular locality under their British charter or their Russian lease. Nor, supposing that the Hudson's Bay Company had undertaken to settle the international boundary, could such action on their part be held to impart to their negotiations with the Russian Company an official character. Those who assert a contrary view overlook the fact that the Hudson's Bay Company did not hold the whole of the Great North-west by the same tenure. With reference to that portion of the country which is watered by streams falling into Hudson's Bay (formerly styled Rupert's Land), it is true that they asserted and exercised, under the charter of Charles II., rights of proprietorship, exclusive trade, taxation, and government. These rights were acquired by Canada for the sum of 300,000*l.*, paid to the Company in 1869. Towards that vast region stretching north and west of Rupert's Land, however, the Hudson's Bay Company occupied a different relation. Under the provisions of an Imperial Act the Company were granted a monopoly of trade with the Indians of that territory for twenty-one years. This grant was subsequently renewed for a like period. Apart therefrom the Hudson's Bay Company possessed no exclusive privileges in the North-west Territory, nor did they assert any.

A good deal of weight is attached by General Foster to the argument drawn from the maps published since the treaty of 1825, the boundary line shown on many of which accords with or goes beyond the contentions of the United States. It is, however, easy to over-estimate the value of such evidence. Some of these maps are almost grotesque in the extreme claims they make, and evidently have been prepared without adequate knowledge of the treaty. Great allowance must, of course, be made for the cartographers. No surveys other than those of Vancouver were undertaken of the shores of the Lynn Canal till after the year 1880, while the mountain ranges along the coast were not surveyed till the year 1895, after the Convention of 1892 had provided for a joint international survey. As the treaty of 1825, which defines the boundary line, makes its location dependent upon alternative circumstances, the occurrence or non-occurrence of mountains running in a direction parallel with the coast, it must be plain that any line placed upon a map before a survey was made, or a knowledge of the existence of such mountains ascertained, cannot be held to establish anything. It is fair to assume that such boundaries were intended by the draughtsman only as an indication of the occurrence of a dividing line somewhere in that region, and later cartographers, in the absence of any further knowledge, simply adopted the location of the line as they found it on earlier maps. The whole country was a veritable *terra incognita* until recent years, with intermittent communication, scant population, and, comparatively speaking, little or no commerce beyond the trade in furs. Under these circumstances the Canadian Government feel that little weight should be attached to maps showing the location of the line incorrectly and inconsistently with the treaty, as appears in the fuller light of subsequent surveys.

The Americans largely rely upon certain acts of occupation by them within the *lisière* to establish their claim to the territory in dispute. The argument drawn therefrom would have more force if Great Britain denied the right of the United States to any *lisière* at all. But this she does not do. Nobody disputes the claim of the United States to a strip of the coast. The point at issue relates to the extent of this strip. Actual possession at many different points no doubt took place, and political control was exercised all along the *lisière* both by Russia and the United States, but the question 'What is the *lisière*?' remains unaffected by this admission. It is therefore beside the mark to assert, as

General Foster does, that the Russian-American Company erected forts and trading posts within the strip, unless it can also be shown that these forts and trading posts were established in that portion of the territory claimed by Great Britain.

What are the facts with respect to the United States' alleged occupation of this disputed territory at the head of Lynn Canal? In the summer of 1880, the Presbyterian Board of Missions appears to have started a school or mission amongst the Indians at Haines Mission, Portage Cove, near the head of the canal. A building was erected there for the purpose of the school about 1881, and the school was continued for some time, but of late years it has been abandoned. The United States census for 1880 shows that at that date there was not a single white settler resident at the head of the Lynn Canal. In 1882 or 1883 a store was established at Pyramid Harbour, and another small trading post, belonging to a private individual, was also known to exist at the head of Taiya Inlet, where Dyea now is, in the year 1887. About 1883 two canneries were erected at Pyramid Harbour, and doubtless several other individual acts of ownership may be adduced as having occurred before the great rush came on the discovery of gold in the Klondike region. But it is contended by Canada that isolated acts of individuals cannot be held to prove national occupation or jurisdiction, particularly when, as in the present instances, it is borne in mind that those settlers were mere squatters, for years unrecognised by the United States. Indeed, no evidence has been produced to show that either a mining grant or a land grant was ever issued by the United States Government before the year 1897 to any person in any part of the disputed territory. It is commonly, though erroneously, supposed that the United States have exercised control at Dyea and Skagway for a considerable period of time. The facts are that Dyea and Skagway did not exist prior to the spring of 1897. At the opening of that year there was nothing more than a single log cabin or shanty at either place. In May the influx of miners to the Klondike began. Thousands of them arrived by steamer in the Lynn Canal, and congregated on its margin where Dyea and Skagway now stand. The necessities of this migration caused the erection of many buildings, and created considerable trade and commerce. Without any survey or further diplomatic action respecting the position of the boundary, the United States Government assumed

political control of these points, and established custom houses, post offices, and other evidences of authority. With such reasonable diligence as the extreme difficulties of access to this territory and other circumstances permitted, Canada protested against this cavalier mode of solving the difficulty, and urged the desirability of establishing the boundary line as contemplated by the Convention of 1892.

It is commonly asserted by the advocates of the United States' contention that Great Britain's claim to the heads of inlets is an afterthought—never dreamed of until the gold discoveries in 1897 drew attention to the advantages of ready means of access to the Yukon country. General Foster, indeed, goes somewhat farther, and intimates that it was not until the International Commission assembled at Quebec in August 1898 that he and his colleagues became aware of any divergence of view between the two Governments respecting the interpretation of the treaty of 1825.

It is somewhat surprising that an American statesman, and an ex-Secretary of State to boot, should commit himself to a statement so easy of disproof. More than ten years ago the United States Government issued a document\* containing letters by Dr. George Dawson (an eminent Canadian authority, who had been summoned to Washington for a conference on the boundary) in support of the Canadian contention as to the line crossing inlets, and also a counter-argument by Mr. Dall, the American expert. Accompanying this report is a map showing how the boundary would run in accordance with the views presented by Dr. Dawson. On this map the line is clearly marked as crossing the Lynn Canal in the vicinity of Berner's Bay. It is also a matter of common knowledge to those in Canada who take interest in this question that on several occasions, both before and after the publication in 1889 of the American Blue-book referred to above, the Dominion authorities protested against arbitrary attempts on the part of the United States to settle the question conformably to its own pretensions.

While the foregoing presentation of the Alaska boundary question is admittedly from the British point of view, it is by no means desired to convey the impression that the facts and the arguments are all one way. On the letter of the treaty the British side have, we think, a decided advantage,

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\* Senate 50th Congress, 2nd Session, Ex doc. No. 146, pp. 4-9. Map No. 16.

prejudiced to some extent by extravagant claims put forward by over-zealous British Columbians—such, for instance, as that the 'coast' refers to the outer shore of the islands, which would not allow the Americans any foothold on the continent at all, though the whole dispute is about a strip of coast on the mainland as distinct from the islands. Scarcely less untenable is the theory that Portland Channel of the treaty does not mean Portland Channel, but Clarence Strait—an entirely different body of water, which Sir C. Bagot endeavoured to get as the boundary and failed.

On the other hand it is not to be denied that the claim of the United States derives a certain amount of strength from the neglect and apathy which for many years characterised Great Britain's attitude towards this question. How far this indifference may be held to impair the advantages of an appeal to the letter of the treaty seems to be one of those questions eminently suited for reference to an arbitral tribunal. So judged the late Lord Herschell and his Canadian colleagues on the International Commission of 1898-99, at which, it is understood, every effort which conciliation could suggest was made by the British Commissioners to remove this vexed question from the domain of controversy. To this end they offered to yield to the United States the whole of the land bordering on the Lynn Canal, except Pyramid Harbour, and such a strip of land running back from that harbour to the boundary line as would secure uninterrupted access to the interior by the Dalton Trail—that is to say, they were prepared to give the United States two ports (Dyea and Skagway and the passes behind) out of three. Should this proposal be unacceptable, the British Commissioners expressed their willingness to agree to a reference of the whole question to arbitration on the lines of the Venezuela Boundary Treaty. That treaty provided that adverse holding for fifty years should make a good title, and also that such effect should be given to occupation for less than fifty years as reason, justice, the principles of international law, and equities of the case required.

The United States Commissioners refused both offers, qualifying their rejection of the latter by a counter-proposal to the effect that in the event of their consenting to an arbitration, it should be understood and provided beforehand that all settlements on tide-water settled on the authority of the United States, should continue to be American territory, even though they might prove to be on



the British side of the line. In other words, they would consent to arbitrate only on condition that the principal objects of the arbitration should be theirs in any event, and that the other parties to the dispute should so covenant before they went into court. The British Commissioners, it is needless to say, found themselves unable to accept this modification of their proposal, and the negotiations were shortly afterwards suspended, whereupon the United States press proceeded to upbraid Canada with what they termed her extravagant demands and unreasonable conduct in thwarting the completion of an arrangement which both the Great Powers interested were desirous to effect. Nor was this unfair criticism wholly confined to the United States. Throughout the press of the mother country there ran a tone mildly deprecatory of what the 'Times' called Canada's 'tremendous tenacity,' and even Mr. Asquith 'was not quite sure that Canada had approached this question 'with the calmness of the United States.' The publication last June of the protocols of the Washington Conference effectually dispelled these misconceptions. It was then seen that Canada, far from having interposed obstacles to the successful issue of the negotiations, had gone to the verge of sacrificing her self-respect in her anxiety to effect a settlement of the dispute, and that it was the uncompromising stand taken by the United States plenipotentiaries which compelled the adjournment of the Commission.

The question naturally arises, why should the United States resolutely decline to refer to arbitration a case which its advocates are never wearied of pronouncing indefeasible, more especially when their position is safeguarded by considerations of possession, occupation, the equities of the case, and so forth? Such an attitude towards a kindred nation seems not a little strange, and of itself almost justifies the inference that the American people do not want the Alaska boundary settled.

It is commonly taken for granted that the cordial feelings entertained by the British people for their American cousins are reciprocated by the latter. Those who have visited only New York and other great centres in the United States have hardly perhaps had enough experience on which to found so wide and satisfactory a judgement. Among those whom they met in Wall Street, at the Clubs, and in society, were many no doubt animated by unaffected sentiments of admiration and regard for the motherland, and it is pleasant to think that this class is increasing in number

year by year. Ultimately it may leaven the entire mass, but up to the present time nothing can be more certain than that the travelled, cultured, broad-minded American does not reflect the views of the nation at large, with whom Great Britain is very far from popular. This, while to be regretted, is perhaps not surprising when the past relations between the two countries are considered. As late as yesterday it might almost be said that Great Britain was the only enemy against whom the United States had ever taken up arms. For generations she has been represented to the American school boy and girl as the traditional foe, from whose tyranny and oppression their forefathers were delivered. The impressions thus inculcated are seldom effaced, for in the United States, as in all countries, school histories are the only histories ever opened by the immense majority of the population.

Were it not for this prejudice pervading the masses, all would be plain sailing. There is little doubt that had circumstances permitted a free hand to President McKinley, or to Mr. Hay, the Alaska boundary question would have been settled before this on terms alike honourable and satisfactory to both countries. Nor would it be extravagant to regard a majority of the United States members of the Joint High Commission, personally, as equally well disposed with the President and his Secretary of State. Unfortunately, the Senate had to be reckoned with, and political exigencies forbade the American plenipotentiaries to agree to any conditions unacceptable to that body.

A generation ago the Senate of the United States took high rank among the second chambers of the world, but of late years its prestige has waned, and though still numbering among its members statesmen who would lend distinction to any legislative body, the Senate itself has become more and more amenable to those ignoble methods which dominate American politics.

From the beginning of this controversy the feeling throughout the Pacific coast has been averse to what is termed 'any cession of American territory,' meaning thereby any abatement of the extreme pretensions of the United States with respect to Alaska. On a mere rumour a year ago that the American members of the Joint High Commission were disposed to consider an arrangement whereby Canada would receive a port on the Lynn Canal, a violent clamour arose in the West, which, being speedily heard in an assembly where almost every man has his ear to the ground

and his eye on the next elections, proved disastrous to the negotiations.

This outcry against a settlement apparently so favourable to the United States was largely due to the effect which, by reason of the Navigation Laws, it would have had upon the carrying trade of the Pacific Coast. The bulk of supplies destined for the Yukon is shipped from Tacoma and Seattle, in Washington territory. Were Pyramid Harbour a British port, British vessels would be free to convey goods from United States ports to that point, while United States vessels would be precluded from carrying goods between Canadian ports and Pyramid Harbour. Here is one of the reasons which render the question of sovereignty so important in this controversy. Under the present laws British vessels may not carry goods from any American port to the Lynn Canal. It is true they can trade between British ports and the Lynn Canal, and a customs arrangement has recently been entered into between Canada and the United States, whereby goods arriving at Skagway may be bonded through to the Yukon district; but this bonding privilege is attended by restrictions more or less irksome, and is terminable at the pleasure of the American Government. Thus Canadian trade, flowing through American channels, is building up American towns in what Canada holds to be British territory. It is, perhaps, not surprising that Canadians should chafe under such a condition of affairs.

As regards the future of this question it is difficult to predicate anything. The United States, having secured under a *modus vivendi* possession of the heads of the Lynn Canal, are not likely to be in any hurry to disturb an arrangement so advantageous to them. On the other hand, various American industries are pressing for freer commercial relations with the Dominion, and Canada's refusal to treat on any of the remaining subjects of difference between the two countries until the question of the Alaska boundary is disposed of may lead to a revival of the International Commission.

The sinister influences which have hitherto stood in the way of an equitable settlement are at their minimum during the session of Congress immediately following a presidential election. Should Mr. McKinley be successful next November, it is possible that the new administration may feel itself strong enough to be able to prevail upon the Senate to sanction a treaty providing for a settlement of the question, either by compromise or by such a reference to arbitration as Canada can accept. Until then, at all events, matters must remain *in statu quo*.